IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA ex rel.
DARRELL V. McGRAW, JR.,
ATTORNEY GENERAL,

Plaintiff,

v. CIVIL ACTION NO. 08-C-268

COUNTRYWIDE FINANCIAL
CORPORATION, a Delaware corporation;
COUNTRYWIDE HOME LOANS, INC., a
New York corporation; COUNTRYWIDE HOME LOANS
SERVICING, LP; a Texas partnership;
FULL SPECTRUM LENDING, INC., a California Corporation;
and ANGELO R. MOZILO, individually and in his
capacity as Chief Executive officer of Defendant
COUNTRYWIDE FINANCIAL CORPORATION

Defendants.

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FILED
PUTNAM CO. CIRCUIT COURT

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

INTRODUCTION

Plaintiff, State of West Virginia, by and through its Attorney General, Darrell V. McGraw, Jr., brings this action pursuant to the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-1-101 *et seq.,* against Countrywide Financial Corporation, a Delaware corporation, Countrywide Home Loans, Inc., a New York corporation and wholly-owned nonbanking subsidiary of Countrywide Financial, Countrywide Home Loans Servicing, LP, a Texas partnership and wholly-owned nonbanking subsidiary of Countrywide Financial Corporation, and Angelo R. Mozilo, Chief Executive Officer of Countrywide Financial Corporation during the relevant period.

I. JURISDICTION AND VENUE

1. Jurisdiction is conferred upon this Court pursuant to W. Va. Code § 51-2-2 and West Virginia Constitution, Article VIII, § 6.

2. Venue lies in this Court pursuant to W. Va. Code § 46A-7-114 and W. Va. Code § 56-1-1.

II. PARTIES

3. The Plaintiff, State of West Virginia, brings this action by and through Darrell V. McGraw, Jr., Attorney General for the State of West Virginia. The Attorney General is authorized to commence and maintain this action on his own behalf and on behalf of consumers pursuant to the provisions of W. Va. Code §§ 46A-7-103, -108, -109, and -111.

4. Defendant Countrywide Financial Corporation ("CFC"), a Delaware corporation located in Calabasas, California, has been doing business in West Virginia during all relevant times.

5. Defendant Countrywide Home Loans, Inc. ("CHL"), a New York corporation located in Calabasas, California, has been doing business in West Virginia during all relevant times.

6. CHL is a licensed mortgage lender in West Virginia with license number MLB-20423 issued by the West Virginia Division of Banking.

7. Defendant Countrywide Home Loans Servicing, LP ("CHLS"), located in Plano, Texas, has been doing business in West Virginia during all relevant times.

8. CHLS is a licensed mortgage lender in West Virginia with license number ML-20634 issued by the West Virginia Division of Banking.

9. Full Spectrum Lending, Inc. ("FSL"), was a California corporation and subsidiary

of CFC before it merged into and became a division of CHL on December 15, 2004.

10. Prior to December 15, 2004, FSL was a licensed mortgage lender in West Virginia with license number ML-04231997-01K.

11. Defendants CFC, CHL, CHLS and FSLD are referred to collectively as "Countrywide".

12. Defendant Angelo R. Mozilo was Chief Executive Officer of CFC during all relevant times.

III. FACTUAL ALLEGATIONS

13. Home ownership is not merely the largest and primary investment for many Americans and West Virginians, it is also the bedrock of the American Dream. The equity in a home allows West Virginians to provide a college education for their children, supports them in retirement, and provides financial support during difficult economic times.

14. In 1969, Countrywide Credit Industries was formed by David Loeb and Angelo Mozilo, and became Countrywide Financial Corporation in 2002.

15. Conventional loans from deposits made at financial institutions, were held on the books of the financial institution and the income was realized over time as the loan was repaid by the consumer.

16. In the 1970s, originators began using securitization to immediately realize the value of mortgage loans.

17. Securitization is the process by which mortgage loans are pooled together to create debt securities, and the payment stream from the loans are used to support interest and principal payments to investors.

18. Once the loans have been securitized, and the value of the loan immediately

realized, the originator can use that capitol to make a new loan.

19. In 1992, Countrywide began "House America", a program designed to sell home loans to low and moderate income families. Countrywide's initial goal was to sell $1.25 billion worth of loans to low and moderate income families.

20. After this goal was met, Countrywide increased the goal to $1 trillion in 2004.

21. Since 2004, the Defendants have sold $850 billion worth of loans to low and moderate income families and hope to exceed their goal of selling $1 trillion worth of home loans by 2010.

22. Countrywide is now the largest mortgage lender in the United States.

23. In order to increase loan volume, Defendants began to sell loans with risky, unconscionable terms.

24. These risky loans also increased the probability the consumer would not be able to pay the note in full.

25. Typically, but not always, subprime borrowers were a credit risk and therefore, the Defendants charged them higher interest rates and fees.

26. Although these subprime loans carry more risk for investors when securitized, the higher interest rates charged for these loans also offer greater returns to investors.

27. In order to make its loans more attractive to investors, the Defendants sold a variety of mortgage loans not just to subprime borrowers, but also to prime borrowers.

28. These new mortgage products were much riskier than conventional loans, and were sold without regard for the consumer's ability to afford them. These loans include, but are not limited to:

(i) loans that required no or little documentation or proof the consumer could repay the loan,

(ii) loans that do not require any down payment,

(iii) adjustable rate mortgage (ARMs) loans that include an initial, or "teaser" interest rate, that lasts for only 2- 5 years and then adjusts to a higher, unaffordable rate,

(iv) interest only loans and;

(v) pay option loans that allow the consumer to make monthly payments of less than the amount of interest that has accrued.

29. The Defendants adopted "flexible underwriting standards" in order to sell these risky, unconscionable products or terms.

30. Frequently, consumers either were not told about or did not understand these risky, unconscionable products or terms. If consumers did question these loans or terms, they were simply told they could refinance later.

31. Currently, the country is experiencing a historic crisis in the housing market that threatens our economy, and delinquency and foreclosure rates are on the rise. The Pew Charitable Trusts ("Pew") predicts, based on numbers from the Center for Responsible Lending, that one in 33 current homeowners in the United States will be in foreclosure in 2008 and 2009. It has been predicted that more than two million homeowners could lose their homes.

32. Midway through 2008, 1.4 million homes have entered foreclosure.

33. Just because a consumer is not facing foreclosure doesn't mean they're not affected. According to Pew, foreclosures in their area will cause Americans to lose up to $356 billion in the value of their homes. All consumers are also affected by a decline in the tax revenues.

34. In West Virginia, during the fourth quarter of 2006, 29.23% of all subprime loans and 36.88% of all subprime ARMs were either in foreclosure or delinquent. Within a year, those numbers increased to 33.59% and 50.58% respectively. By the first quarter of 2008, the number of subprime ARMs in foreclosure had increased 86 basis points from 18.99% in December 2007 to 19.85%.

35. During the relevant period of time, Countrywide had numerous branch offices in West Virginia.

36. Countrywide sold West Virginia consumers unconscionable loans and engaged in unconscionable conduct to induce consumers to purchase these loans.

37. Countrywide sold West Virginia consumers loans when there was no reasonable probability of the consumers being able to pay the loan in full.

38. Countrywide engaged in unfair and deceptive acts or practices in the marketing, originating and servicing of mortgages to West Virginia consumers.

39. These violations of West Virginia law have caused West Virginians to become delinquent on their payments or to enter foreclosure.

40. For example, in March 2006, the Defendants originated two loans for a West Virginia couple who was purchasing a home for $65,000. The wife was blind and had a tenth grade education while the husband had an eighth grade education.

41. Countrywide sold the consumers two loans that covered the entire purchase price of the house, and therefore, did not require a down payment. These loans are referred to as 80/20 piggyback loans. The first loan covers 80% of the purchase price and the second loan, which piggybacks the first loan, covers the remaining 20% of the purchase price.

42. The first loan was a thirty years fixed rate loan for 80% of the purchase price, or $52,000, at a rate of 11.625% and monthly payments of $519.92.

43. The second loan, a home equity line of credit ("HELOC"), was a fifteen years balloon loan for the remaining 20% of the purchase price, or $13,000, with an interest rate of 12.875% and monthly payments of $142.54. However, the final monthly balloon payment due at the end of the 15 years was $11,480.25.

44. The couple's total monthly income, according to Countrywide's loan application, was $2,253.33.

45. When the final payment on the HELOC is due, after 15 years of payments, the couple will not be able to afford the second loan, or their home, and will face foreclosure.

46. The couple would have been unable to refinance the loan at that time because the appraisal obtained by Countrywide was inflated.

47. Although the consumers purchased the house for $65,000, based on Countrywide's appraisal, the value of the house was actually $27,100.

48. The couple were unaware they even had two loans until they received two bills from Countrywide.

49. Countrywide did not just offer consumers 80/20 piggyback loans with fixed rates. They also offered consumers piggyback loans with hybrid adjustable rate mortgages. Hybrid ARMs have a fixed interest rate for a certain number of years and then the interest rate is adjustable for the rest of the term of the loan.

50. Countrywide also sold Adjustable Rate Mortgages in West Virginia with 2-5 year teaser rate periods. After the interest rate reset, the consumer could no longer afford the loan.

51. Countrywide also sold Pay Option ARMs in West Virginia. These loans were marketed as giving the consumer options in the amount they would pay each month for their mortgage. Pay Option ARMs allow consumers to choose to pay the interest due every month,

or to pay a fraction of the interest due every month, or to pay an amortized amount to pay off the loan in 15 or 30 years.

52. When less than the full amount of interest is paid, the deferred interest is negatively amortized as the balance of the unpaid interest is added to the principal.

53. In one case, Countrywide sold a Pay Option ARM to a 77 year old consumer. The loan had a teaser rate for the first five years, and an option to pay less than the full interest due each month for ten years. However, the loan was negatively amortizing, and the minimum pay option was available only until the principal reached 115% of the amount originally borrowed. Therefore, the amount he would have to pay each month could change dramatically.

54. Even if the loan did not reach the maximum negative amortization cap, after 10 years, the monthly payments due would recast to pay off the loan by the maturity date.

55. Additionally, the consumer was not even given the option to choose the smallest monthly payment provided as he was told when he purchased the loan. Instead, Countrywide included inconsistent language in the note that provided that the initial monthly minimum payments would be less than the full amount of interest due, yet still more than the consumer thought he would be obligated to pay.

56. In short, the consumer was sold an unconscionable loan without even having the benefit of paying the smallest payment option.

57. Defendants advised consumers who were sold unconscionable, unaffordable loans to refinance when they could no longer afford them.

58. Consumers with piggyback HELOCS or loans that were negatively amortizing, who owed 100% or more of the value of their home, were not able to refinance into an affordable loan unless the value of the house increased. Therefore, as the cost of houses

began to decrease, consumers with unaffordable loans from Countrywide who were unable to refinance would inevitably lose their homes.

59. Countrywide also charged consumers prepayment penalties in violation of West Virginia law, which further impeded consumers ability to refinance into affordable loans.

60. Countrywide used unfair and deceptive acts or practices in selling mortgages to consumers.

61. Countrywide also engaged in unfair and deceptive acts or practices in servicing loans.

62. In some cases, Countrywide charged consumers for appraisals for property even when Countrywide knew they were not going to lend the consumer money.

63. For example, in one case, the loan was not approved because the property was commercial, but Countrywide charged for the appraisal anyway. Consumers only received refunds after the Attorney General's office intervened.

64. In at least one case, the consumer was not notified prior to closing that they would not receive the loan; they were at the closing and no one from Countrywide showed up.

65. In other cases, consumers were preapproved for loans and then after they had a property under contract, Countrywide would refuse to loan the money based on information the consumer disclosed to Countrywide prior to the preapproval.

66. Countrywide also held on to checks consumers had written to make mortgage payments in order to assess additional fees on the accounts.

67. Countrywide also charged fees to consumers who did not authorize them. Consumers were only refunded after the intervention of the Attorney General's office.

68. Countrywide also unreasonably refused or delayed acceptance of appraisals to eliminate Private Mortgage Insurance ("PMI") in order to continue collecting the PMI.

FIRST CAUSE OF ACTION

(The loans are unconscionable)

69. The State of West Virginia realleges and incorporates by reference all paragraphs above, as though fully set forth in this cause of action.

70. Defendants have made, and continue to make, unconscionable transactions, and to engage in unconscionable conduct to induce those transactions as prohibited by W. Va. Code §46A-2-121.

SECOND CAUSE OF ACTION

(The loans were unaffordable when they were originated)

71. The State of West Virginia realleges and incorporates by reference all paragraphs above, as though fully set forth in this cause of action.

72. Defendants made unconscionable loans to consumers when they knew there was no reasonable probability of payment in full of the obligation by the consumer in violation of W. Va. Code §46A-7-109(3)(a).

73. Defendants have knowingly taken advantage of the inability of consumers to reasonably protect their interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors in violation of W. Va. Code §46A-7-109(3)(e).

74. The unconscionable loans and conduct of the Defendants have caused or are likely to cause injury to consumers.

75. Defendants have been able to cause the injury primarily because the transactions are credit transactions.

THIRD CAUSE OF ACTION

(Unfair or deceptive acts or practices)

76. The State of West Virginia realleges and incorporates by reference all paragraphs above, as though fully set forth in this cause of action.

77. Defendants engaged in unfair or deceptive acts or practices in the conduct of trade or commerce in violation of W. Va. Code §46A-6-102, -104.

FOURTH CAUSE OF ACTION

(Prepayment penalties)

78. The State of West Virginia realleges and incorporates by reference all paragraphs above, as though fully set forth in this cause of action.

79. Consumers have the right to prepay a loan at any time without penalty, except that during the second and third years of the loan, a prepayment penalty of only 1% of the original principal amount may be charged pursuant to W. Va. Code §46A-3-110.

WHEREFORE, the Plaintiff respectfully requests that this Court:

1. Pursuant to W. Va. Code § 46A-7-109, issue an injunction against the Defendants to restrain them from engaging in a course of:

(i) Making or enforcing unconscionable terms or provisions of these consumer loans, including foreclosing on any properties;

(ii) Fraudulent or unconscionable conduct in inducing consumers to enter into these loans; and

(iii) Obtaining and/or enforcing a deficiency judgment when property is sold in a foreclosure caused by unconscionable terms or provisions of these consumer loans and/or the fraudulent or unconscionable conduct in inducing consumers to enter into the loans.

2. Order all contracts, loan agreements, notes or other evidence of indebtedness between Defendants and West Virginia consumers who were affected by the prohibited and unlawful acts, methods and practices of the Defendants be rescinded or reformed;

3. Award restitution to the consumers who lost money as a result of the prohibited and unlawful acts, methods and practices of the Defendants pursuant to W. Va. Code § 46A-6-106;

4. Order Defendants to delete any negative credit history it has reported to any credit reporting agency due to a consumer's inability to make payments on an unconscionable loan;

5. Assess a civil penalty against the Defendants in the amount of $5,000.00 for each and every willful and repeated violation of the West Virginia Consumer Credit and Protection Act pursuant to W. Va. Code § 46A-7-111(2);

6. Order the Defendants to pay the reasonable costs of this action, including, but not necessarily limited to, the investigation, filing fees and attorney's fees; and

7. Grant any and other further relief as to this Court appears fair and just.

STATE OF WEST VIRGINIA
ex rel. DARRELL V. McGRAW, JR.,
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By Counsel

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